

AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 691

Introduced by Senator Ashburn

February 23, 2007

An act to amend ~~Sections 1338.5 and 1417.2~~ *Section 1338.5* of the Health and Safety Code, and to amend ~~Section 14126.023~~ of the Welfare and Institutions Code, relating to nurse assistant certification costs.

LEGISLATIVE COUNSEL'S DIGEST

SB 691, as amended, Ashburn. Nurse assistants.

~~(1) Existing~~

Existing law requires a criminal record clearance to be conducted for all nurse assistants by the submission of fingerprint cards to the State Department of Health Services for processing at the Department of Justice, and requires completion of the criminal record clearance prior to issuance or renewal of a certificate. Existing law provides that the fee to cover the processing costs of the Department of Justice shall not exceed a specified amount. Effective July 1, 2007, these duties of the State Department of Health Services will be transferred to the State Department of Public Health.

Existing law requires each health facility that operates and is used as a clinical skills site for certification training, and each health facility, prior to hiring a nurse assistant applicant certified in another state or country, to arrange for and pay the cost of the fingerprint live-scan service and the Department of Justice processing costs for each applicant. Existing law prohibits health facilities from passing these costs through to nurse assistant applicants unless allowed by federal law.

This bill would ~~authorize~~ *require* a health facility that ~~operates, and is used as a clinical skills site for a certification training; that is operated by specified entities or programs to deduct from the total amount of its annual licensure fee~~ *keep a record* of the total amount of the incurred costs that the health facility actually pays in the prior year, as ~~specified prescribed~~. It *authorizes a health facility to provide a copy of the record to the State Department of Public Health for reimbursement, contingent upon an appropriation in the annual Budget Act.*

(2) ~~Existing law establishes the Health Facilities Citation Penalties Account, the funds in which are available, upon appropriation by the Legislature, to the department to be used for the protection of health or property of residents of long-term health care facilities, as specified.~~

~~This bill would also authorize these funds to be used to reimburse the department for any decrease in funds available to the department's Licensing and Certification Division caused by the annual license fee deduction authorized by this bill.~~

(3) ~~Existing law, the Medi-Cal Long-Term Reimbursement Act, requires the department until July 1, 2008, to implement a cost-based reimbursement rate methodology for free-standing nursing facilities. The act requires the department to seek approval of a Medicaid state plan amendment specifically outlining the reimbursement methodology developed pursuant to these provisions. The act also provides that it shall remain operative only as long as specified skilled nursing facility quality assurance fee provisions continue, as approved by the federal Centers for Medicare and Medicaid Services, and federal financial participation for the methodology implemented under these provisions continues. The rate methodology established pursuant to these provisions would cease to be implemented on and after July 31, 2008.~~

~~This bill would prohibit the department from including the deduction that would be authorized by this bill from the department's reimbursement rate methodology for the costs of a facility's annual license fees.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1338.5 of the Health and Safety Code is
2 amended to read:

1 1338.5. (a) (1) (A) A criminal record clearance shall be
2 conducted for all nurse assistants by the submission of fingerprint
3 images and related information to the state department for
4 processing at the Department of Justice. The licensing and
5 certification program shall issue an All Facilities Letter (AFL) to
6 facility licensees when both of the following criteria are met:

7 (i) The program receives, within three business days, 95 percent
8 of its total responses indicating no evidence of recorded criminal
9 information from the Department of Justice.

10 (ii) The program processes 95 percent of its total responses
11 requiring disqualification in accordance with paragraph (2) of
12 subdivision ~~(C)~~ (c) of Section 1337.9, no later than 45 days after
13 the date that the report is received from the Department of Justice.

14 (B) After the AFL is issued, licensees shall not allow nurse
15 assistant trainees or newly hired nurse assistants to have direct
16 contact with clients or residents of the facility prior to completion
17 of the criminal record clearance. A criminal record clearance shall
18 be complete when the department has obtained the person's
19 criminal offender record information search response information
20 from the Department of Justice and has determined that the person
21 is not disqualified from engaging in the activity for which clearance
22 is required. Notwithstanding any other provision of law, the
23 department may, without taking regulatory action pursuant to
24 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
25 3 of Title 2 of the Government Code, implement, interpret, or make
26 specific this paragraph by means of an AFL or similar instruction.
27 The fee to cover the processing costs of the Department of Justice,
28 not including the costs associated with capturing or transmitting
29 the fingerprint images and related information, shall not exceed
30 thirty-two dollars (\$32) per submission.

31 (C) An applicant or certificate holder who may be disqualified
32 on the basis of a criminal conviction shall provide the department
33 with a certified copy of the judgment of each conviction. In
34 addition, the individual may, during a period of two years after
35 the department receives the criminal record report, provide the
36 department with evidence of good character and rehabilitation in
37 accordance with subdivision (d) of Section 1337.9. Upon receipt
38 of a new application for certification of the individual, the
39 department may receive and consider the evidence during the

1 two-year period without requiring additional fingerprint imaging
2 to clear the individual.

3 (D) The department's Licensing and Certification Program shall
4 explore and implement methods for maximizing its efficiency in
5 processing criminal record clearances within the requirements of
6 law, including a streamlined clearance process for persons who
7 have been disqualified on the basis of criminal convictions that do
8 not require automatic denial pursuant to paragraph (2) of
9 subdivision (a) of Section 1337.9.

10 (2) (A) Upon enrollment in a training program for nurse
11 assistant certification, and prior to direct contact with residents, a
12 candidate for training shall submit a training and examination
13 application and the fingerprint cards to the state department to
14 receive a criminal record review through the Department of Justice.
15 Submission of the fingerprints to the Federal Bureau of
16 Investigation shall be at the discretion of the state department.

17 (B) An applicant and any other person specified in this
18 subdivision, as part of the background clearance process, shall
19 provide information as to whether or not the person has any prior
20 criminal convictions, has had any arrests within the past 12-month
21 period, or has any active arrests, and shall certify that, to the best
22 of his or her knowledge, the information provided is true. This
23 requirement is not intended to duplicate existing requirements for
24 individuals who are required to submit fingerprint images as part
25 of a criminal background clearance process. Every applicant shall
26 provide information on any prior administrative action taken
27 against him or her by any federal, state, or local government agency
28 and shall certify that, to the best of his or her knowledge, the
29 information provided is true. An applicant or other person required
30 to provide information pursuant to this section that knowingly or
31 willfully makes false statements, representations, or omissions
32 may be subject to administrative action, including, but not limited
33 to, denial of his or her application or exemption or revocation of
34 any exemption previously granted.

35 (3) Each health facility that operates and is used as a clinical
36 skills site for certification training, and each health facility, prior
37 to hiring a nurse assistant applicant certified in another state or
38 country, shall arrange for and pay the cost of the fingerprint
39 live-scan service and the Department of Justice processing costs
40 for each applicant. A health facility may not pass these costs

1 through to nurse assistant applicants unless allowed by federal law
2 enacted subsequent to July 12, 2006. A health facility that ~~operates~~
3 ~~and is used as a clinical skills site for a certification training may~~
4 ~~program that is operated through a community college, adult~~
5 ~~education program, or a regional occupational center or program~~
6 shall keep a record of the fingerprint live-scan service and the
7 Department of Justice processing costs that it incurs on and after
8 August 1, 2006. ~~The~~ This health facility may then provide a copy
9 of the record to the State ~~Department of Public Health.~~
10 ~~Notwithstanding Section 1266, the department shall deduct that~~
11 ~~amount from the total amount of the annual licensure fee that the~~
12 ~~department assesses the health facility pursuant to that section~~
13 *Department of Public Health in order to apply for direct*
14 *reimbursement to recover these costs. Contingent upon an*
15 *appropriation by the Legislature in the annual Budget Act, the*
16 *department shall reimburse the total amount of the incurred costs*
17 *that the health facility actually paid in the prior year, except that*
18 *the costs paid in 2007 shall also include the costs paid in 2006 for*
19 *costs incurred between August 1, 2006, and December 31, 2006,*
20 *inclusive. A health facility that receives this reimbursement shall*
21 *properly record it as an offset against the facility cost reported in*
22 *the integrated long-term care disclosure and the Medi-Cal cost*
23 *report required by Section 128730.*

24 (b) The use of fingerprint live-scan technology implemented
25 by the Department of Justice by the year 1999 shall be used by the
26 Department of Justice to generate timely and accurate positive
27 fingerprint identification prior to nurse assistant certification and
28 prior to direct contact with residents by the nurse assistant
29 applicant. The department shall explore options to work with
30 private and governmental agencies to ensure that licensees have
31 adequate access to electronic transmission sites, including requiring
32 the department to maintain a contract for electronic transmission
33 services in each of the district offices where facilities have
34 indicated problems with timely access to electronic transmission
35 sites or consistent delays of more than three business days in
36 obtaining appointments for electronic transmission services through
37 a private entity, government agency, or law enforcement agency.

38 (c) The state department shall develop procedures to ensure that
39 any licensee, direct care staff, or certificate holder for whom a
40 criminal record has been obtained pursuant to this section or

1 Section 1265.5 or 1736 shall not be required to obtain multiple
2 criminal record clearances.

3 (d) If the department is experiencing a delay in processing the
4 renewal of the certified nursing assistant's certification at the time
5 of the expiration of the certified nursing assistant's certification,
6 the department may extend the expiration of the certified nursing
7 assistant's certification for six months.

8 (e) If, at any time, the department determines that it does not
9 meet the standards specified in clauses (i) and (ii) of subparagraph
10 (A) of paragraph (1) of subdivision (a), for a period of 90
11 consecutive days, the requirements in paragraph (1) of subdivision
12 (a) shall be inoperative until the department can demonstrate it has
13 met those standards for a period of 90 consecutive days.

14 (f) During any time in which the requirements of paragraph (1)
15 of subdivision (a) are inoperative, facilities may allow newly hired
16 nurse assistants to have direct contact with clients or residents of
17 the facility after those persons have submitted live scan fingerprint
18 images to the Department of Justice, and the department shall issue
19 an AFL advising facilities of this change in the statutory
20 requirements.

21 (g) Notwithstanding any other provision of law, the department
22 is authorized to provide an individual with a copy of his or her
23 state or federal level criminal offender record information search
24 response as provided to that department by the Department of
25 Justice if the department has denied a criminal background
26 clearance based on this information and the individual makes a
27 written request to the department for a copy specifying an address
28 to which it is to be sent. The state or federal level criminal offender
29 record information search response shall not be modified or altered
30 from its form or content as provided by the Department of Justice
31 and shall be provided to the address specified by the individual in
32 their written request. The department shall retain a copy of the
33 individual's written request and the response and date provided.

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 23, 2007. (JR11)**

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